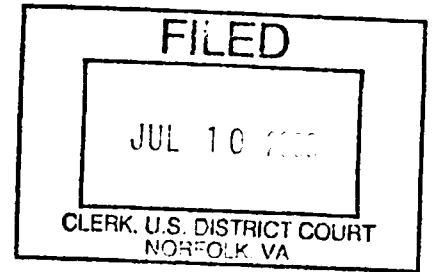


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



ABREY M. THOMAS, #287868

Petitioner,

v.

2:09CV61

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on June 28, 2000, in the Circuit Court for the City of Virginia Beach, Virginia, for two counts of attempted burglary. As a result of the convictions, petitioner was sentenced to serve twenty years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on June 2, 2009. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on June 15, 2009, a document entitled "Brief in Opposition," which is construed as objections to the report.


The Court, having reviewed the record and examined the objections filed by the petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge. Therefore, it is ORDERED that the petition be DENIED and DISMISSED

on the basis of the statute of limitations and that judgment be entered in respondent's favor.

To the extent that petitioner objects to the Magistrate Judge's finding that the petition is barred by the statute of limitations, the objection is without merit. The petition was filed more than four years after petitioner's judgment became final and is clearly outside of the limits of the statute of limitations. The Court appreciates the fact that petitioner is not skilled in the art of law, but he has set forth no facts which would permit the conclusion that his lengthy delay in filing was caused by any actions other than his own. The claims addressing the nature and the sufficiency of the evidence should have been raised on direct appeal and are now beyond the consideration of this Court.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 336 (U.S. 2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for the respondent.

/s/
Rebecca Beach Smith
United States District Judge 
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

JULY 10, 2009